

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**May 17, 2000**

**IN RE:**

**APPLICATION OF TERRABROOK LADD  
UTILITIES, LLC FOR A CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY TO  
PROVIDE SEWER SERVICE**

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**DOCKET NO. 99-00509**

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**ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

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On February 15, 2000, this matter came before the Tennessee Regulatory Authority ("Authority") for consideration of the Application of Terrabrook Ladd Utilities, LLC ("Terrabrook Ladd") for a Certificate of Public Convenience and Necessity ("CCN") to provide sewer service to a proposed development in Williamson County. The Application was made pursuant to Tenn. Code Ann. § 65-4-201.

**LEGAL STANDARD FOR GRANTING CCN**

Terrabrook Ladd's Application was made pursuant to and was considered in light of the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201, which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or

route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

### **Background**

The applicant, Terrabrook Ladd Utilities, LLC, is a limited liability company created under the laws of the State of Delaware on July 1, 1999. Terrabrook Ladd received its Certificate of Authority to transact business in the State of Tennessee on July 5, 1999. Terrabrook Ladd is owned by Westbrook United Land Investments, L.P., which does business under the name Terrabrook.

The principal address of Terrabrook Ladd is 3030 LBJ Freeway, Suite 1500, LB-6, Dallas, Texas 75234. The current Tennessee mailing address of Terrabrook Ladd is 2111 Fieldstone Parkway, Franklin, Tennessee 37069.

Terrabrook Ladd was created by Terrabrook to operate a wastewater collection and treatment system to provide sewer service to a proposed residential golf course community. This community is to consist of approximately 1500 lots and is being developed by Terrabrook on the "Ladd property" in southern Williamson County. This development is in an area not currently served by the City of Franklin ("the City") or any other municipal utility, utility district, or other private sewer utility. The development covers approximately 630 acres in Williamson County; it is located outside of the City's municipal boundaries and is not contiguous to any properties which are located within the City.

To serve the proposed Terrabrook development, Terrabrook Ladd proposes to operate a gravity flow sewer collection system and a conventional sewage treatment plant with a capacity of approximately 525,600 gallons per day with a zero discharge spray irrigation disposal system. Terrabrook will contribute the wastewater treatment plant and disposal

facilities to Terrabrook Ladd. Terrabrook Ladd proposes to grant by contract prepaid sewer connection privileges to Terrabrook for the lots in the proposed development. Purchasers of the lots will not pay a tap fee to Terrabrook Ladd.

During its initial years of operation, Terrabrook Ladd will not generate enough revenues from monthly sewer charges to pay the anticipated operation and maintenance costs and other operating expenses of the system. However, Terrabrook has agreed to provide funds to Terrabrook Ladd to offset the deficit in sewer revenues until enough customers are available to cover Terrabrook Ladd's projected operating expenses. Terrabrook will recover this up-front contribution in the lot costs associated with the development.

Terrabrook Ladd has proposed the following rates for monthly sewer service for residential customers:

Minimum Monthly Charge (first 2,000 gallons)	\$18.00
Charge per 1,000 gallons (actual or assumed flow)	\$ 2.03

Terrabrook Ladd does not anticipate having any commercial customers for the development; therefore, no commercial rates have been proposed.

The proposed rates for monthly service should begin covering Terrabrook Ladd's operating expenses in its fifth year of operation. Terrabrook Ladd projects that the proposed rates will produce an annual revenue contribution by each customer of \$411.00, assuming a monthly usage of 10,000 gallons. The projected monthly bill for sewer service based on the proposed rates will be \$34.24.

On July 15, 1999, Terrabrook Ladd filed an Application with the Authority for a CCN to provide sanitary sewer service for the proposed development. Before filing the Application, Kenneth Green, Vice President of Terrabrook and Vice President and General Manager of Terrabrook's Nashville operations, and James Littlejohn, President of Littlejohn

Engineering Associates, met with representatives of the City of Franklin to discuss the provision of sewer service to the proposed Terrabrook development. According to testimony presented at the Hearing, the City advised Mr. Green that the City's policy was not to provide sewer service to any area not located within the City. Mr. Green was also advised that the closest sewer main line to the proposed development did not have sufficient capacity to accept wastewater from the proposed development. In his pre-filed testimony, Mr. Green stated that he met with the Williamson County Executive, Clint Callicott, and discussed with him the creation of a private sewer utility to provide sewer service to the proposed development, and Mr. Callicott expressed no objection to the Application.

Mr. Green's testimony also stated that on August 31, 1999, he met with the Mayor of Franklin, Jerry Sharber, to discuss the Application, that Mr. Sharber indicated that he believed the City would eventually annex the area where the proposed development is located but stated no definite time for annexation, and that Mr. Sharber expressed no objections to the Application. Terrabrook Ladd has agreed to use the City's design and equipment specifications for the construction of the sewer treatment and collection system to enable a seamless transfer of the sewer facilities should the City annex the area to be served by Terrabrook Ladd.

### **Intervenors**

On July 22, 1999, Terrabrook Ladd filed a Notice of Service of Application on Interested Parties, certifying that a copy of the Application had been mailed to the County Executive of Williamson County, Tennessee, the Mayor of the City of Franklin, Tennessee, and the President of Milcrofton Utility District of Williamson County, Tennessee. A Hearing on this matter was originally scheduled for November 2, 1999. At the City's request, and

without objection from Terrabrook Ladd, the Hearing was postponed to allow the City to intervene. A Hearing was then scheduled for February 15, 2000.

Public notice of the Hearing in this matter was made by the Authority's Executive Secretary pursuant to Tenn. Code Ann. § 65-4-204. The City filed a Petition to Intervene in this proceeding on January 27, 2000. At a regularly scheduled Authority Conference held on February 1, 2000, the Directors voted unanimously to appoint General Counsel or his designee to serve as Pre-Hearing Officer in this matter, to act on the City's petition and prepare this case for Hearing. The Pre-Hearing Officer approved the City's Petition to Intervene.

The City requested that the Application be denied. First, the City contended that Terrabrook Ladd did not show that the City refused service to the area Terrabrook Ladd proposes to serve, nor did Terrabrook Ladd show that the City would be unable to supply service to that area within a reasonable time through additions and extensions to its present system. The City also stated that the area Terrabrook Ladd proposes to serve is within the projected urban growth boundary of the City, established pursuant to Tenn. Code Ann. § 6-58-101 *et seq.*; that creation of a private sewer company in that area would result in higher costs for future residents; and that the City would be able to provide the service more efficiently and effectively.

#### **TERRABROOK LADD'S HEARING**

On February 10, 2000, Terrabrook Ladd filed the pre-filed testimony of Mr. Green and Mr. Littlejohn. Mr. Green and Mr. Littlejohn testified on behalf of Terrabrook Ladd at the Hearing and were available for cross-examination by the City of Franklin. On February 10, 2000, the City filed the pre-filed testimony of James Johnson, City Administrator for the City

of Franklin. Mr. Johnson testified at the Hearing and was subject to cross-examination by Terrabrook Ladd.

At the Hearing on February 15, 2000, Terrabrook Ladd stated that it sought approval of its Application to provide sewer service in an area in Williamson County not currently served by the City of Franklin, Williamson County, or any other private or public utility. Terrabrook Ladd further stated that it sought to receive sewer service from the City and was advised that the City did not provide sewer service to property located outside its boundaries.

The City stated that it opposed Terrabrook Ladd's application because Terrabrook Ladd had not presented a formal application to the City and because no formal consideration had been given to provide sewer service in the area to be served by Terrabrook Ladd. Further, the City stated that it has evaluated sewer service alternatives for the area to be served by Terrabrook Ladd and that, although the Tennessee Department of Environment and Conservation denied its proposal for alternatives in 1998, further studies of the area have been conducted and in January 2000 the City submitted another plan for sewer service alternatives. The City expressed concern that the approval of an application by a private utility company to provide service in Williamson County would present issues of fairness should the City annex that area in the future if the private utility company provided service at rates different from the rates charged to customers currently served by the City. The City also objected to the Application on the grounds that Terrabrook Ladd never formally requested that the Ladd property be annexed into the City.

The City stated that the application should not be approved prior to the implementation on July 1, 2000 of the City's proposed urban growth plan established pursuant to Tenn. Code Ann. § 6-58-101 *et. seq.* The City asserts that the Ladd property is in its proposed urban growth boundary and that the City will eventually be better able to provide

service to the area; therefore, the City contends, the application should be denied. In support of its position, the City cites Tenn. Code Ann. § 6-58-106(a)(1)(D), which provides that a municipality identifying its urban growth boundary should identify areas in which the municipality is better able to provide services than other municipalities. Counsel for the City admitted, however, that the provisions of Tenn. Code Ann. § 6-58-101 *et seq.* pertaining to urban growth plans do not preclude the Authority's approval of Terrabrook Ladd's application.

### **Findings**

Terrabrook Ladd has shown that a need exists for sewer service for the proposed development. The City is unable at the present time to provide sewer service for this area and cannot state if and when it will be able to do so. The City's desire to provide service to this area at some unspecified later date does not preclude approval of the application.

The property to be developed by Terrabrook is not contiguous to any properties which are located within the City. The City does not serve outlying areas and has no definite plans to annex the area where the proposed development will be located. Therefore, Terrabrook Ladd had no reason to make a formal request for service from the City or for annexation. Even so, representatives of Terrabrook Ladd met with both City and County officials, discussed their proposed wastewater system, and received no objections from those officials. Terrabrook Ladd has agreed to build the sewer treatment and collection system to the City's design and equipment specifications, making a transfer of the facilities easy to incorporate into the City's sewer system. Any future takeover of Terrabrook Ladd's sewer system by the City in the event of annexation should not adversely affect the City's existing sewer

customers. Under the circumstances, Terrabrook Ladd has done more than enough to accommodate the City.

The City's concerns regarding the implementation of an urban growth plan pursuant to Tenn. Code Ann. § 6-58-101 *et. seq.* are without merit. Tenn. Code Ann. § 6-58-101 *et. seq.* does not preclude the Authority from approving Terrabrook Ladd's Application to provide sewer service in an area not currently served by the City. Further, the City's concerns regarding the possibility of unfairness caused by differing rates should the City later annex the area served by Terrabrook Ladd are unfounded. The City has the option to acquire Terrabrook Ladd's system and rate structure, or develop its own facilities and rates should annexation occur.

Although the City states that it has studied alternative plans, the City's Mayor and Board of Aldermen have not approved the implementation of any alternative plans. Mr. Johnson did not know when and if these proposed projects would be approved. No funding for the projects has been approved. These plans are dependent upon other developments in the area contributing to the sewer main extensions and improvements required for these projects, but the City has no commitments for such contributions from any development at the present time.

Tenn. Code Ann. § 6-58-106(a)(1)(D)<sup>1</sup> is silent about how the identification of an urban growth boundary affects the statutory duty of the Authority to approve applications for CCNs of public utilities that meet the requirements of Tenn. Code Ann. § 65-4-201. The City cites no other section addressing the Authority's role in the planning process in the

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<sup>1</sup> This subsection states as follows:

(a)(1) The urban growth boundaries of a municipality shall:

(D) Identify territory in which the municipality is better able and prepared than other municipalities to efficiently and effectively provide urban services . . .

Tenn. Code Ann. § 6-58-106(a)(1)(D).

comprehensive growth planning law codified at Tenn. Code Ann. §§ 6-58-101 to 6-58-115. The law says nothing about the Authority's role in the planning process. Plainly, as counsel for the City admits, the law does not preclude approval of Terrabrook Ladd's application.<sup>2</sup>

Upon review of the Application and the record in this matter, the Authority finds that Terrabrook Ladd's Application to provide wastewater collection and sewer treatment services to the proposed development meets the standards of Tenn. Code Ann. § 65-4-201. The Application and supporting documentation demonstrate that Terrabrook Ladd has the requisite technical and managerial ability necessary to provide wastewater collection and sewer treatment facilities within the State. Terrabrook Ladd has the necessary capital and financial capability to provide the services it proposes to offer and has represented that it will adhere to all applicable policies and rules and orders of the Authority.

Finally, the rates Terrabrook Ladd proposes for sewer service are just and reasonable. Terrabrook's contribution of the sewer treatment plant, disposal facilities, and collection system to Terrabrook Ladd, together with its agreement to fund the initial operating costs of Terrabrook Ladd, will enable Terrabrook Ladd to provide the requested service at rates which are just and reasonable and which will permit it to be a viable sewer utility.

Therefore, the Authority concludes that the future public convenience and necessity require the approval of this Application.

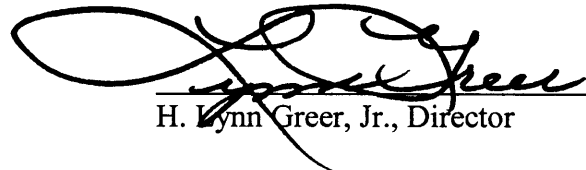
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<sup>2</sup> On February 14, 2000, the County Executive of Williamson County, Mr. Clint Callicott, sent a letter to the Authority. In the letter, Mr. Callicott advises the Authority of a moratorium currently imposed in Williamson County on the use of non-traditional sewage disposal systems, such as the system proposed in the Application, on May 20, 1999. The letter states that the moratorium shall remain until the Waste and Wastewater Authority of Williamson County adopts new regulations for non-traditional sewage disposal systems or for one (1) year, whichever occurs earlier. Further, the Authority is requested to forebear the issuance of a CCN until Williamson County adopts and implements regulations for non-traditional sewage disposal systems.

**IT IS THEREFORE ORDERED THAT:**

1. The Application of Terrabrook Ladd Utilities, LLC for a Certificate of Public Convenience and Necessity is approved;
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order; and
3. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

  
Melvin J. Malone, Chairman

  
H. Lynn Greer, Jr., Director

  
Sara Kyle, Director

ATTEST:

  
K. David Waddell, Executive Secretary